

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

KENNETH JONES,

Defendant and Appellant.

A150630

(City & County of San Francisco  
Super. Ct. No. 226014)

Kenneth Jones was convicted by a jury of assault with a deadly weapon. He contends the evidence was insufficient to prove the alleged weapon, a wine bottle he threw at the victim, was capable of inflicting or likely to inflict great bodily injury. He also asserts a minute order must be corrected to conform to the restitution fine orally imposed by the court. Substantial evidence supports the verdict so we affirm the judgment. The minute order must be corrected to reflect the court's oral pronouncement of the restitution fine.

**BACKGROUND**

The following statement of facts is set forth in accord with the standard of review for substantial evidence. (See *People v. Ceja* (1993) 4 Cal.4th 1134, 1138–1139; *In re Leland D.* (1990) 223 Cal.App.3d 251, 258.) Jim C.<sup>1</sup> worked as a maintenance supervisor at an apartment complex at Third and Folsom Streets in San Francisco. On the morning of June 9, 2016, he responded to a report that a man later identified as Jones was

---

<sup>1</sup> We will refer to the victims by their first names to protect their privacy. We intend no disrespect by this practice.

trying to break into the pump room in the complex's parking garage. When he arrived, Jones was in an agitated state, yelling at janitor Gobino O. Jim told Jones to leave. Jones "came at" Jim and grabbed or pushed him as he moved toward the exit.

Jim and Gobino followed Jones to ensure that he left the garage. Jones walked down the stairs to the street level while Jim and Gobino remained on the stairs one level above. Jones was "very aggressive," "like a crazy person," "screaming and screaming." When he was about 20 feet away, he grabbed a wine bottle from a garbage can and threw it straight at Jim and Gobino. The bottle hit the stairs and shattered near their feet.

Jim descended the stairs. Jones tackled him against a parked car and punched him repeatedly. Jim fell backwards and struck the back of his head.

San Francisco Police Officer Ryan Jones responded to the scene. Jim was bleeding from lacerations on his face and head and appeared to be in shock. Jones approached the officer, yelling and screaming obscenities. The officer asked him to calm down, but "he would not stop yelling. [¶] . . . [¶] It never stopped." Jim pointed out the broken bottle and identified Jones as the person who threw it at him. Jones responded, "Yeah, I threw the bottle at him. I tried to split his head open." While police were transporting Jones to jail he said, "[F]uck that white boy. I fucked him up. He tried to hit me, and I tried to kill him."

Jones was convicted of assault with a deadly weapon and misdemeanor assault. The jury acquitted him of assault with force likely to cause great bodily injury. The court sentenced Jones to three years in prison, suspended execution of sentence, placed him on five years' probation and imposed various fines and fees. This appeal is timely.

## **DISCUSSION**

### **I. The Conviction Is Supported by Substantial Evidence**

Jones asserts his conviction for assault with a deadly weapon must be reversed because there was insufficient evidence to show he used the wine bottle in a manner capable of producing and likely to produce death or great bodily injury. The assertion is meritless.

In considering whether there is insufficient evidence for a criminal conviction, we review the entire record in the light most favorable to the judgment to determine whether it contains substantial evidence—that is, evidence that is reasonable, credible, and of solid value—such that a reasonable trier of fact could have found the defendant guilty of the crime beyond a reasonable doubt. (*People v. Chatman* (2006) 38 Cal.4th 344, 389; *People v. Johnson* (1980) 26 Cal.3d 557, 577–578.) We “presume in support of the judgment the existence of every fact the jury could reasonably have deduced from the evidence. [Citation.] ‘Conflicts and even testimony [that] is subject to justifiable suspicion do not justify the reversal of a judgment, for it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends. [Citation.] We resolve neither credibility issues nor evidentiary conflicts; we look for substantial evidence. [Citation.]’ [Citation.] A reversal for insufficient evidence ‘is unwarranted unless it appears “that upon no hypothesis whatever is there sufficient substantial evidence to support” ’ the jury’s verdict. [Citation.]” (*People v. Zamudio* (2008) 43 Cal.4th 327, 357.)

“As used in [Penal Code] section 245, subdivision (a)(1), a ‘deadly weapon’ is ‘any object, instrument, or weapon which is used in such a manner as to be capable of producing and likely to produce death or great bodily injury.’ [Citation.] Some few objects, such as dirks and blackjacks, have been held to be deadly weapons as a matter of law; the ordinary use for which they are designed establishes their character as such. [Citations.] Other objects, while not deadly per se, may be used, under certain circumstances, in a manner likely to produce death or great bodily injury. In determining whether an object not inherently deadly or dangerous is used as such, the trier of fact may consider the nature of the object, the manner in which it is used, and all other facts relevant to the issue.” (*People v. Aguilar* (1997) 16 Cal.4th 1023, 1028–1029; *People v. Perez* (2018) 4 Cal.5th 1055, 1065.)

While a bottle is not inherently deadly, when it is thrown at another person, with force over a short distance, it may be a deadly weapon. (See *People v. Fagalilo* (1981) 123 Cal.App.3d 524, 528, 532 [evidence codefendant threw a wine bottle at victims, striking

one in the back and two others in the head or face, was sufficient to establish assault by means of force likely to produce great bodily injury]; *People v. Martinez* (1977) 75 Cal.App.3d 859, 862–863, fn. 1 [throwing beer bottle at marked police car “indisputabl[y]” constituted assault with deadly weapon or by means likely to produce great bodily injury]; *People v. Cordero* (1949) 92 Cal.App.2d 196, 198–199 [beer bottle “used as [a] club or a missile, constitutes a deadly weapon”].)

Here, Jones was enraged and belligerent when he threw the bottle at Jim and Gobino from about 20 feet away. Jim testified that Jones threw the bottle overhand and hard enough so that it shattered when it hit the stairs near their feet, “so it wasn’t at an arc. It was at us.” Moreover, Jones *admitted* that he was trying “to split [Jim’s] head open” and “to kill him.” Those statements were direct evidence that Jones intended to cause great bodily injury, further supporting a reasonable inference that he in fact used the wine bottle in a manner likely to do so.

Jones complains there was no testimony about the amount of force necessary to send a bottle flying 20 feet or for it to break upon hitting concrete, but the jurors could rely on their common sense and experience to reasonably infer that a wine bottle thrown that far would likely cause significant or substantial physical injury or harm if it hit the mark. (See *People v. Cross* (2008) 45 Cal.4th 58, 63–64 [great bodily injury means significant or substantial physical injury as distinguished from trivial or insignificant injury or moderate harm].) In sum, there is ample evidence to support the verdict.

## **II. Restitution Fine**

At the sentencing hearing, the court ordered Jones to pay a \$280 restitution fine pursuant to Penal Code section 1202.4, subdivision (b)<sup>2</sup> in relation to the felony conviction and a \$100 restitution fine for the misdemeanor assault conviction. Although the minute order accurately reflects the \$280 amount imposed for the felony, it shows a restitution fine of \$150, not \$100, for the misdemeanor. Jones asserts the minute order must be conformed to the court’s oral pronouncement.

---

<sup>2</sup> Further statutory citations are to the Penal Code.

“[A]s the Supreme Court has reasoned in *People v. Smith* (1983) 33 Cal.3d 596 . . . , though the older rule is to give preference to the reporter’s transcript where there is a conflict, the modern rule is that if the clerk’s and reporter’s transcripts cannot be reconciled, the part of the record that will prevail is the one that should be given greater credence in the circumstances of the case.” (*People v. Pirali* (2013) 217 Cal.App.4th 1341, 1346.)

The People argue the minute order must prevail “[b]ecause the trial court was statutorily prohibited from imposing a restitution fine less than \$150 . . . .” They are mistaken. Under the version of section 1202.4, subdivision (b)(1) in effect at the time of Jones’s offense, “[t]he restitution fine shall be set at the discretion of the court and commensurate with the seriousness of the offense. If the person is convicted of a felony, the fine shall not be less than two hundred forty dollars (\$240) starting on January 1, 2012, two hundred eighty dollars (\$280) starting on January 1, 2013, and three hundred dollars (\$300) starting on January 1, 2014, and not more than ten thousand dollars (\$10,000). If the person is convicted of a misdemeanor, the fine shall not be less than one hundred twenty dollars (\$120) starting on January 1, 2012, one hundred forty dollars (\$140) starting on January 1, 2013, and one hundred fifty dollars (\$150) starting on January 1, 2014, and not more than one thousand dollars (\$1,000).” (Stats. 2016, ch. 31, § 240, No. 2 Deering’s Adv. Legis. Service, p. 287.) Here, the court orally imposed a total restitution fine of \$380. While it technically erred by allocating the total amount between the two counts, the total restitution fine was within the statutory range of \$300 to \$10,000. Accordingly, it was statutorily authorized. (See, e.g., *People v. Sencion* (2012) 211 Cal.App.4th 480, 483; *People v. Enos* (2005) 128 Cal.App.4th 1046, 1049–1050.) The record provides no other basis to believe the variance in the minute order reflects anything other than a clerical error, so we order it corrected to conform to the court’s oral pronouncement.

### **DISPOSITION**

The trial court is directed to prepare a corrected minute order and/or abstract of judgment to reflect a total restitution fine of \$380 and to forward a certified copy of the

corrected document to the California Department of Corrections and Rehabilitation. (See *People v. Mitchell* (2001) 26 Cal.4th 181, 185–186.) As so modified, the judgment is affirmed.

---

Siggins, P. J.

WE CONCUR:

---

Jenkins, J.

---

Petrou, J.